IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WA.No. 2228 of 2007

AGAINST THE JUDGEMENT IN WPC.24553/2007 Dated 14/08/2007
.....

APPELLANT/PETITIONER:

P.M.POULOSE, PARATHUVAYALIL HOUSE,
KEEZHILLAM P.O., ERNAKULAM.

BY ADV. SRI.R.D.SHENOY (SR.)
SRI.S.VINOD BHAT

RESPONDENTS/RESPONDENTS:
---

1. THE SECRETARY, MUDAKKUZHA GRAMA PANCHAYATH, MUDAKKUZHA-683 546.

2. MUDAKKUZHA GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, MUDAKKUZHA-683 546.

BY SPECIAL GOVT. PLEADER MR.C.T.RAVIKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2228 of 2007

Dated, this the 12th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

This writ appeal is directed against the orders passed by the learned Single Judge in W.P.(C) No.24553 of 2007 dated 14th August, 2007.

(2) Ext.P4 is the application filed by the appellant before the Secretary of the Mudakkuzha Grama Panchayat for grant of a quarry licence in Sy.No.93/1 of Vengoor West Village. The application filed by the appellant is as under:

> "From
>
> P.M.Poulose,
> Parathuvayalil,
> Keezhillam.
>
> To
>
> Secretary,
> Mudakkuzha Grama Panchayath.
>
> Sub: Application for issuance of licence to conduct quarry in Sy.No.93/1 in Vengoor West Village.
>
> ---
>
> Sir,
>
> I propose to conduct quarrying operation in the property in my possession comprised in Sy.No.93/1 of Vengoor West Village and for the said purpose kindly grant me the Panchayath Licence. I am enclosing herewith the following documents:
>
> 1. Explosive licence
> 2. Mining and Geology Permit
> 3. Blastman Certificate
> 4. Possession Certificate and sketch and plan
> 5. Title Deed
>
> Place: Keezhillam Sd/-
> Date: 30.6.2007 P.M.Poulose"

(3) The Secretary of the Grama Panchayat by his order dated 2.7.2007 has rejected the application in view of the orders passed by this Court in O.P.Nos.14221 of 2000 and 8018 of 2001 dated 2nd of June, 2006. The order passed by the Secretary of the Grama Panchayat is as under:

"No.A3 412/07 Mudakkuzha Grama Panchayath
Mudakkuuzha P.O. 683 542
(Via) Vengoor, Ernakulam Dist.

From
The Secretary Date: 2.7.2007

To
Sri.P.M.Poulose,
Parathuvayalil House,
Keezhillam P.O.

Sir,

Sub: Rejection of licence to conduct quarry in Sy.No.93/1 of Vengoor Village – Mudakkuzha Grama Panchayath-

Ref: 1. Your letter dated 30.6.2007 requesting for grant of licence
2. Judgment dated 2.6.2006 in OP 14221/2000 and OP 8018/2001 of the Hon'ble High Court of Kerala-

Your application for grant of licence cited as reference No.1 above, to conduct quarry in Re.Sy.No.93/1 in Vengoor West Village Block 17 is rejected as the said property is within 500 meters of Pettamala Ambedkar Colony and as per judgment of the Hon'ble High Court of Kerala, cited in reference No.2 above.

Sd/-
Secretary,
Mudakkuzha Grama Panchayath"

(4) The appellant, aggrieved by the aforesaid order passed by the Secretary of the Grama Panchayat has preferred an appeal before the Panchayat Committee. The Panchayat Committee in its meeting held on

1.8.2007 has rejected the appeal filed by the appellant, yet again relying upon the observations made by this Court in O.P.Nos.14221 of 2000 and 8018 of 2001 dated 2.6.2006. The order passed by the Panchayat Committee is as under:

> "Mudakkuzha Grama Panchayath
>
> Decision No.III taken in ordinary meeting 1-8-2007
>
> Appeal No.2/2007, filed under Section 276 of Kerala Panchayath Raj Act, against the order dated 2.7.2007 of the Secretary, Panchayath for grant of licence to conduct metal quarry in the property of Poulose, Parathuvayalil House, Keezhillam Kara, situate in Re.Sy.No.93/1, Block No.17, Vengoor West Village, Mudakkuzha Grama Panchayath was considered by the council in detail.
>
> As the property situate in Sy.No.93/1, Block No.17, Vengoor West Village is within a distance of 500 meters of Ambedkar Colony, as per judgment dated 2.6.2006 of the Hon'ble High Court of Kerala in OP Nos.14221/2000 and 8018/2001 which is in force, the appeal filed by P.M.Poulose is decided as rejected.
>
> Sd/-
> President"

(5) Aggrieved by the aforesaid order passed by the Secretary (Ext.P6) and the order passed by the Panchayat Committee (Ext.P10), petitioner is before this Court in W.P.(C) No.24553 of 2007. The learned Judge by his order dated 14th August, 2007 has rejected the writ petition, yet again relying upon Ext.P7 judgment passed in O.P.No.8018 of 2001. However, has granted liberty to the petitioner, if he so desires, to seek review of the order passed in Ext.P7 judgment.

(6) Aggrieved by the aforesaid order passed by the learned Single Judge the appellant is before us in this writ appeal.

(7) Sri.R.D.Shenoy, learned Senior Counsel appearing for the appellant, would contend that the Secretary of the Grama Panchayat and the Panchayat Committee were not justified in rejecting the appellant's application solely relying upon the observations made in Ext.P7 judgment by a learned Judge of this Court in O.P.No.8018 of 2001. Alternatively, it is contended that the Kerala Minor Mineral Concession Rules, 1967 ('the Rules' for short) do not provide for prohibiting quarrying operation within 500 metres from a colony in the Grama Panchayat. Therefore, it is stated that the direction issued by the learned Single Judge in the aforesaid original petition requires to be reconsidered by us in this appeal.

(8) First and foremost, we cannot take exception to the order passed by the Secretary of the Grama Panchayat dated 2.7.2007 or the order passed by the Panchayat Committee (Ext.P10) dated 1.8.2007. In fact, they have faithfully followed the orders and directions issued by this Court in O.P.No.8018 of 2001 dated 2nd of June, 2006. In the said judgment the learned Judge has made it clear that there shall not be any quarrying operation within 500 metres from the Ambedkar Harijan Colony in the Grama Panchayat. If for any reason, the Secretary of the Grama Panchayat or the Panchayat Committee had entertained the application filed by the appellant, it would have amounted to disobedience of the orders and directions issued by this Court.

(9) In the light of the orders and directions issued by this Court, the Secretary of the Grama Panchayat and the Panchayat Committee had no alternative but to reject the appellant's application. In our opinion, if for any reason, the appellant is aggrieved by the orders which are coming in his way of proper consideration of his application, he is always at liberty to make an

appropriate application/review petition before the very learned Judge who has passed the order Ext.P7. At this stage, learned Senior Counsel would submit that certified copy of the judgment passed in O.P.No.8018 of 2001 is not available and therefore, he is prevented from filing a review petition. In our opinion, the excuse offered by the learned Senior Counsel may not be justified as the learned counsel can definitely make an application when he files a review petition, for dispensing with the production of certified copy of the judgment passed in O.P.No.8018 of 2001. In that view of the matter, the following:

Order

i) Writ appeal is disposed of.

ii) Liberty is reserved to the appellant, if he so desires, to make an appropriate application/review petition for modifying the orders passed in O.P.No.8018 of 2001.

iii) If and when such a review petition is filed by the appellant, we request the learned Judge to consider the same in accordance with law.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/dk